



# **Criminal Enforcement**

## **A Look Back Over the Past Ten Years**

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**E**nvironmental crimes can have profound impacts on both the environment and public health. Many of the statutes that the Washington State Department of Ecology implements contain criminal sanctions. The criminal enforcement program operates under the assumption that when environmental laws are violated in a criminal manner, the violator should be prosecuted through the criminal courts.

Ecology employs two full time criminal investigators. The investigators work with EPA criminal investigators, forming the Ecology / EPA Criminal Investigations Task Force, headquartered in Seattle. The Task Force, which conducts investigations of possible criminal violations, is an example of Ecology and the federal Environmental Protection Agency (EPA) working together to achieve the goal of compliance with environmental laws.

Ecology is very selective in deciding which cases it will refer for prosecution, working closely with the prosecuting attorney. While the number of criminal cases pursued in any one fiscal year is relatively small, the penalties imposed and associated jail time act as significant deterrents.

## Recognizing Criminal Violations

Criminal behavior differs from civil violations based upon the attitude of the violator. Generally, criminal behavior is defined as a violation which was conducted knowingly, intentionally and/or willfully.

Evidence of criminal wrongdoing is sometimes blatant, but usually quite subtle. Examples include:

- ❖ Conflicting data: two sets of books, inconsistent monitoring reports of the same incident; questionable signatures or data submitted on required reports

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- ❖ Conflicting stories: when an inspector is led to believe one thing, yet they find something quite different in records or through observation; attempts to cover-up the violation
  - ❖ Deliberate actions: when an employee says he was told to do something illegal
  - ❖ Claims of ignorance about requirements

Additionally, any fraudulent reporting, testimony or record keeping may also be considered a crime.

## **Referring Possible Criminal Actions**

The Department of Ecology's Criminal Investigations Unit (CIU) has primary responsibility for investigating criminal provisions of state environmental laws. One of Ecology's investigators is co-located with EPA's Office of Criminal Investigations in Seattle and the other is located in Ecology's Central Regional Office in Yakima. The criminal investigators work for all of the Ecology programs.

Cases are often referred to the Criminal Investigations Unit by Ecology inspectors, members of the public or disgruntled employees.

## **Conditions of Criminal Enforcement**

Criminal cases may be brought against individuals or corporations accused of committing environmental crimes. There are two classifications of crimes: felonies and misdemeanors. Felonies are more serious crimes. There are felony provisions in the Dangerous Waste, the Clean Air, and the Oil Spill statutes. They are punishable by confinement in a state prison. Misdemeanors are lesser offenses, and are punishable by confinement in a local city or county jail. Cases may involve more than one crime and are usually pursued under the laws that are easier to prosecute and where the evidence is most compelling. Criminal enforcement options are considered for the most significant and egregious violations.

It is possible and often desirable to pursue both civil and criminal enforcement actions concurrently, provided that the civil rights of the accused are observed. Also, cases may involve traditional crimes such as theft, fraud and false statements.

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Investigators may search a person or a person's property seeking evidence of alleged criminal activity only: (1) with the consent of the person; or (2) after obtaining a warrant based upon sworn testimony demonstrating that there is "probable cause" to believe that a crime has been committed and that the search is necessary to obtain evidence of the crime.

All information concerning suspected criminal activity is treated as confidential. Premature disclosure of criminal allegations may jeopardize a case and/or slander a business or individual.

## **Prosecution**

Cases investigated by the EPA-Ecology task force may be prosecuted in either the federal or state court system. Ecology tries to direct appropriate cases into state courts whenever possible. The decision whether a case will or will not be prosecuted or where a case will be filed rests entirely with the prosecutor, either the U.S. Attorney or the local Prosecuting Attorney. It is not a decision that can be made by either Ecology's Criminal Investigations Unit or the Attorney General's Office. A prosecutor may choose not to prosecute a case for a variety of reasons.

There is a stringent Standard of Proof; a prosecutor must prove his or her case "beyond a reasonable doubt."

## **Cases Referred for Prosecution**

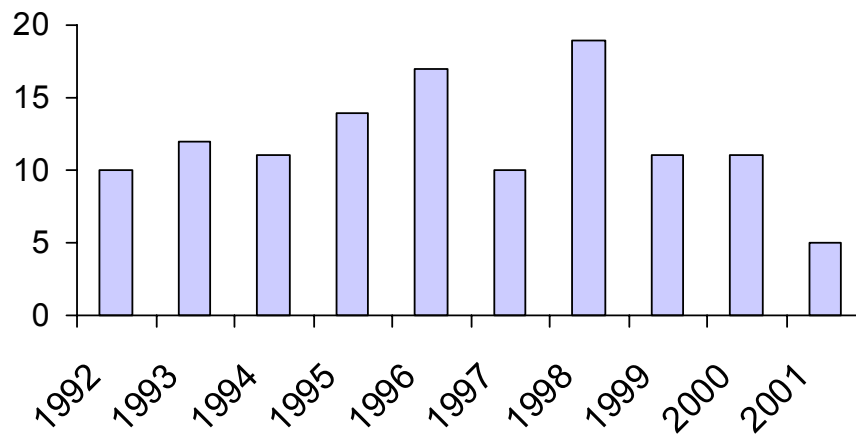
Ecology is sensitive to the impacts a criminal prosecution can have, and is very selective in the cases that are referred for criminal prosecution. From July, 1992 through June, 2001, 1,288 "Complaints of Possible Criminal Activity" were filed by the general public, other agencies, and Ecology civil investigators. Of those, 210 cases were investigated. (Criminal investigators screened out those complaints that did not warrant a full investigation.) After additional review and legal analysis, 120 cases were referred for criminal prosecution to local, state and federal prosecutors. (See Figure 1 for number of cases referred each year.) In all, 91% of the complaints were screened out.

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The 127 criminal charges filed in the ten fiscal years from 1992 to 2001, resulted in 110 criminal convictions. The criminal penalties assessed for these environmental crimes amounted to \$4,286,665.

While Ecology derives no direct benefits from the imposition of the criminal penalties, quite often, the restoration of the environment in lieu of fines results from innovative settlements.

**Figure 1.**  
**Number of Cases Referred for Prosecution**  
**by State Fiscal Year**



The flow chart on page 11 gives a general overview of the criminal investigations process and key communication points.

## **Pollution Prevention**

Criminal enforcement against corporations and/or individuals usually results in the immediate cessation of activities that cause the release of pollutants into the environment.

From July 1999 to June 2000, closed criminal investigations resulted in 950,458 pounds of pollutants and 65,922 square feet of friable asbestos not entering the environment. Of the 950,458 pounds of pollutants, 163,510 pounds were hazardous waste and the rest were water pollutants. In addition, shutting down these operations prevented an estimated 112,050 pounds of hazardous wastes and 786,948 pounds of water pollutants from entering the environment each year thereafter.



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## Conclusions

- ❖ As well as adversely impacting the environment and natural resources of our state, environmental crimes often harm human and community health.
- ❖ Criminal prosecution sends a clear message that environmental crimes are not tolerated in the State of Washington.
- ❖ Out of 1,288 complaints screened over the last ten years, 210 cases warranted criminal investigation. 57% of the investigated cases were referred for prosecution, and 127 criminal charges were filed. 110 resulted in criminal convictions and a total of \$4,286,665 in penalties was assessed.
- ❖ Criminal enforcement acts as a deterrent to others who might commit environmental crimes.

## Criminal Enforcement Statistics in Washington 1992-2001

Washington State Environmental Criminal Enforcement Summary <sup>1</sup>											
Fiscal Years 1992-2001											
	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001	TOTALS
Complaints/Referrals Received	133	121	97	119	107	61	193	178	143	136	1288
Cases Retained for Criminal Investigations	12	18	19	47	24	20	31	16	11	12	210
Criminal Warrants Served	6	13	8	10	21	8	4	4	2	4	80
Cases Referred for Criminal Prosecution (Number of Cases)	10	12	11	14	17	10	19	11	11	5	120
Criminal Charges Filed (Number of Defendants)	10	13	9	25	11	17	17	9	10	6	127
Criminal Convictions (Number of Defendants)	8	13	4	18	11	13	19	9	9	6	110
Penalty Amount Collected	\$548,000	\$563,000	\$561,225	\$553,333	\$377,000	\$300,140	\$780,644 *	\$27,500	\$35,137	\$540,686	\$4,286,665
Total number of months in jail			11	76	143	72	78.6	30	36	36	482.6
Total months of probation			300	276	339	300	511	206	246	96	2,274

\* Includes "innovative settlement" \$350,000-environmental restoration in lieu of fine.

<sup>1</sup> Summary includes all criminal cases prosecuted in the state under both state, Federal and/or joint jurisdictions.



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## APPENDIX B

**This is a brief summary of environmental criminal cases prosecuted under the authority of the state of Washington from 1991 - 2001. These cases resulted in 33 convictions. Prosecutions conducted in the state of Washington under federal jurisdiction resulted in additional convictions.**

- 1) State vs. Koopmans (Skagit Co.) - Defendant dairy owner convicted of 4 counts of criminally violating the WA Water Pollution Control Act for intentionally dumping thousands of gallons of manure into a tributary of Padilla Bay. Apparently, the first state criminal case of its type in WA. Defendant sentenced to jail time, active probation, and \$40,000.00+ in fines.
- 2) State vs. Tacoma Yamaha (Pierce Co.) - Defendant motorcycle retailer convicted of criminally violating WA Water Pollution Control Act by tapping into the Tacoma storm sewer and dumping hazardous wastes (e.g. solvents, acids, degreasers, etc.) and other pollutants into Commencement Bay. Defendant given a two-year suspended sentence, placed on court-supervised probation, and fined.
- 3) State vs. Irwin (Snohomish Co.) - Defendant asbestos-removal contractor convicted of criminally violating the WA Clean Air Act for unlawfully dumping and storing 53+ cubic yards of asbestos in a residential neighborhood. Apparently, the first criminal conviction of its type under the WA Clean Air Act. Defendant given a two-year suspended sentence, placed on active probation, and fined.
- 4) State vs. Farris (Clark Co.) - Defendant convicted of malicious mischief 1<sup>st</sup> degree for dumping over 100 containers of hazardous wastes, oil, and other pollutants on state forest land. Defendant was sentenced to 14 months in prison and ordered to make full restitution for the damage and clean-up costs.

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- 5) U.S. vs. Ortman, et al. (Stevens Co.) - Prosecution brought under federal law (i.e. RCRA, etc.) pursuant to an appointment as a Special Assistant United States Attorney. Defendants, two corporate managers of a magnesium reclaiming facility, were convicted of illegal disposal of hazardous wastes for directing the burial of eighty 55-gallon drums containing contaminated sulfuric acid. Defendants were sentenced to jail time, post-supervision release, and fines.
  - 6) State vs. Atkinson (Lewis Co.) - Case currently pending. Defendant is the former operator of a wastewater treatment plant who intentionally pumped raw sewage into the Newaukum River over an extended period of time and then falsified the Discharge Monitoring Reports to cover up the crime. He is charged with 3 counts of criminally violating the WA Water Pollution Control Act and 2 counts of Offering a False Instrument for Filing or Record. There is a bench warrant out for his arrest.
  - 7) State vs. Merritt (Pierce Co.) - Defendant is a self-employed clean-up contractor who defrauded an elderly widow and dumped oil and other pollutants on her property rather than removing them and paying for their legitimate disposal. He was charged with theft, malicious mischief, and hazardous waste charges under RCW 70.105. Ecology paid for the clean-up cost (the dumping took place in a well-head protection area; and an environmental justice area) Merritt pled guilty to malicious mischief violating WA hazardous waste laws and was sentenced to pay \$6,000 to the victim and \$8,146.18 to Ecology for clean up and \$860 court costs, etc. and 365 days in jail with 305 days suspended.
  - 8) State vs. Wakefield, et al (Pierce Co.) - Defendants, board members of an organization that operated a wastewater treatment plant, are alleged to have intentionally pumped untreated sewage onto a beach and into Puget Sound in order to avoid the cost of legitimate disposal. This was done over the objection of the certified plant operator and despite repeated warnings of its illegality. Both defendants entered into the Pre-trial Diversion Program in connection with the charge of violating the WA Water Pollution Control Act. Ordered to complete 240 hours of community service, \$1,000 restitution and \$1,000 pre-trial diversion fee.

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- 9) State vs. Post (Whatcom Co.) - Defendant, owner of a substantial dairy farm, is alleged to have repeatedly discharged large quantities of manure into a tributary of the Nooksack River. Apparently, the defendant's intentional illegal disposal of his farm's manure has, despite repeated government warnings, orders, and fines, been occurring since 1984. Defendant charged with two counts of violating WA Water Pollution Control Act; subject to global plea agreement, defendant pled guilty to two counts, will pay \$5,000 fine, and will be on probation for two years. To settle civil case, defendant will go out of business and pay \$40,000 penalty.
  - 10) State vs. Lewis (Clark Co.) Defendant pled guilty to unlawful disposal of hazardous waste and was sentenced to forty-five days in jail on work release and ordered to pay \$4,623.03 to Ecology as restitution and placed on two years of community supervision.
  - 11) State vs. Haynes (Pierce Co) Defendant dumped approximately 1,151 gallons of diesel fuel onto the ground instead of delivering it to Fort Lewis. Defendant pled guilty to: malicious mischief, theft, polluting a water supply, violating the solid waste laws and the Pierce County Uniform Fire Code, and was sentenced to 36 months of confinement. The employer paid restitution.
  - 12) State vs. Perkins (King Co.) Defendant dumped petroleum-contaminated soil on someone else's property and was charged with Theft I, Criminal Trespass II, and Unlawful Dumping. Defendant pled guilty to and was sentenced for criminal trespass in the second degree and unlawful dumping. Defendant was sentenced to 240 hours community service; one year probation, to pay restitution and court costs and a \$5,000 fine with \$4,000 suspended.
  - 13) State vs. Kindelspire (King Co) - Defendant illegally removed asbestos and attempted to steal a \$2,000 check payable to a certified asbestos contractor. Defendant was charged with 5 counts of violating the WA Clean Air Act and one count of attempted Theft I. Defendant pled guilty to the attempted theft count and three Clean Air Act counts, and was sentenced to 10 years financial supervision, 15 months confinement, \$2,000 restitution, court and \$500 VPA, and recoupment of attorney fees.

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- 14) State vs. Angell (King Co.) Defendant was involved in the illegal removal of underground storage tanks and the illegal removal of asbestos. Defendant pled guilty in state court to 10 counts of unregistered contracting, one count of violating the Federal Clean Water Act and one count of violating the Federal Clean Air Act in Federal Court. Defendant was sentenced to 24 months imprisonment, 36 months probation in Federal Court, and a 90-day term of imprisonment followed by 6 months probation and \$5,800 in restitution in the State Court.
  - 15) State vs. Grant (King Co.) Defendant was charged with six counts of violating the WA Clean Air Act and four counts of Theft II in connection with a number of illegal asbestos removals. Defendant pled guilty to three counts of Theft II and guilty to one count of attempted theft and one count of violating the WA Clean Air Act. Defendant was sentenced to pay full restitution to the victims, 10 years financial supervision, serve four months of confinement, and 12 months of community supervision.
  - 16) State vs. Golden (Pacific Co.) Defendant hired someone to destroy earthen dam belonging to Trumpeter Swan Society in violation of WA Clean Water Act. Defendant pled guilty to conspiracy to violate the WA Hydraulics Project Permit Requirements and sentenced to court cost and CVA, restitution of \$35,103.30, a \$1,000 fine, 90-day incarceration, suspended one year and one-year probation.
  - 17) State vs. Freigang (Kitsap Co.) Defendant and his son illegally abandoned about 2,250 gallons of ignitable hazardous waste, paint and solvent waste. The integrity of the containers had deteriorated and hazardous waste was released into the environment. Both defendants were charged with violating WA hazardous waste laws and entered into pretrial diversion programs which included clean-up and remedial action under MTCA, which were successfully completed.

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- 18) State vs. Anderson (Snohomish Co.) Defendant was charged with violating WA state hazardous waste laws by illegally storing, transporting, and disposing hazardous waste. Defendant pled guilty to illegal storage and was sentenced to a \$5,000 fine and 365 days in jail; suspended, except \$250. Placed on 24 months probation.
- 19) State vs. Lavigueure (Snohomish Co.) Prosecution brought under Federal law (Clean Water Act) due to defendant's business and political connections. Defendant rerouted a salmon stream and pled guilty in Federal Court. Defendant sentenced to 3 years probation, 150 hours community service and restoration of habitat \$350,000.
- 20) State vs. Tortorelli (King Co.) Defendant removed sunken trees from Lake Washington in violation of WA state Clean Water Act. The investigation proved the defendant took the sunken trees illegally, and he was charged with 12 counts of theft I and convicted at trial. The misdemeanor environmental charges were dropped as a trial strategy. Defendant is currently serving a 43-month prison sentence and was ordered to pay \$180,000 to the state in restitution.
- 21) State vs. Nelson, et al (King Co.) Defendants (3) solicited bribes to pass vehicles at Ecology vehicle emission test stations in violation of the WA State Clean Air Act and other general criminal provisions of the state of WA. All three defendants pled guilty to grafting by employees, and were sentenced to probation and community service due to the small amount of money involved.
- 22) State vs. Irwin, Tim (Snohomish Co.) Defendant, a former state Senator, re-routed 700 feet of a stream in violation of the WA state Clean Water Act. Under plea agreement, must restore creek to prior condition and donate \$2,500 to environmental charity.
- 23) State vs. Nice, et al (Gray's Harbor Co.) Three defendants dumped meth lab waste on the beach. Due to evidentiary problems, drug charges could not be filed. Defendants pled guilty to violations of WA hazardous waste acts and all served jail time and probation.

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24) State vs. McFadden, Richard (King Co.) Defendant pled guilty to three state clean air violations, and 20 counts of tax fraud. McFadden, one of the largest wood stove dealers in the King Co. area was selling large numbers of uncertified wood stoves. During the criminal search warrants evidence of tax fraud was also seized. Indicating that McFadden was not remitting about \$266,474 in state sales tax and about \$3,610 in wood stove fees he had collected. McFadden agreed to make full restitution to the state and will serve between 33 and 53 months in prison, depending on the timing and the amount of restitution paid.

## Criminal Enforcement

### 1. Recognizing Possible Criminal Activity

Generally, criminal behavior differs from civil violations based upon the mental state of the violator. Usually, the requisite mental state is that the person committed the violations knowingly, or intentionally and/or willfully. Criminal cases may be brought against individuals or corporations accused of committing a crime. Additionally, any fraudulent reporting, testimony or record keeping may also be considered a criminal action. Like civil enforcement, nearly all statutes enforced by Ecology contain provisions authorizing criminal sanctions for certain violations.

Criminal enforcement options should be considered for the most significant and egregious violations.

Evidence of criminal wrongdoing can be quite subtle. Therefore, the inspector should be alert to the types of findings listed below and view these as “red flags” which may indicate criminal action:

- ✓ Conflicting data: two sets of books, inconsistent monitoring reports of the same incident; questionable signatures or data submitted on required reports
- ✓ Conflicting stories: when an inspector is lead to believe one thing, yet they find something quite different in records or through observation; attempts to cover-up the violation
- ✓ Deliberate or negligent actions: when an employee says he was told to do something illegal (i.e., waste dumping, illegal WQ discharges, spills, air releases)
- ✓ Claims of ignorance about requirements: this can be challenged when copies displaying knowledge are discovered in the records, or others make statements during interviews of knowledge.

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The above list is by no means all-inclusive. The point is, any conduct that may show an intentional and willful violation of the law could be a criminal action. Generally, experienced inspectors usually will have a “gut-feeling” when something just “doesn’t seem right.” These “gut” reactions shouldn’t be ignored. Look further into the situation and keep in mind the potential for criminal activity.

## **Handling Possible Criminal Violations**

A common mistake made by civil inspectors is to “back away” from an inspection when possible criminal evidence is discovered. Just the opposite is the correct procedure when handling these inspections. When probable criminal activity is discovered, continue conducting a thorough inspection and completely documenting your findings. Keep in mind, your civil inspection may be the best and/or only opportunity to gather the vital evidence needed for a formal enforcement action, including a criminal enforcement.

The information gathered in a civil inspection may be used as evidence to establish probable cause for obtaining a search warrant by a criminal investigator to further investigate possible criminal activities. However, it is not appropriate to use a civil inspection as a means to circumvent the constitutional restrictions on criminal investigations.

## **Referring Possible Criminal Actions**

Field staff should consider the following criteria when evaluating whether to refer a case for criminal enforcement, when in doubt call Ecology’s Criminal Investigations Unit:

### **1. Nature of the Violation**

- a. Was the violation committed knowingly, intentionally, and/or willfully?
- b. Was the act a major violation of the applicable laws and/or regulations?
- c. Did the violator know the act was a violation?
- d. Did the violator try to hide the violation, file false reports, or tamper with monitoring equipment?
- e. Does Ecology have strong evidence of the violation (i.e., samples, admissions, witness statements, photographs, complete written documentation?

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## **2. Potential for Harm**

- a. Was there actual, or potential harm to public health or the environment caused by the violation?
- b. Did an illegal discharge, release or emission result in actual damage to the environment?
- c. Did the violation cause a serious threat of harm to human health?
- d. Does Ecology have evidence of the threat or damage to public health or the environment?

## **3. Compliance History**

- a. Does Ecology have evidence of previous violations at this facility, or by this individual?
- b. Has Ecology previously notified the violator of the applicable laws and/or regulations?
- c. Has Ecology taken previous civil enforcement actions against this violator?
- d. Have civil or administrative remedies been adequate?

## **4. Deterrent Effect**

- a. Would a criminal enforcement have a positive deterrent effect on the violator and on the regulated community?

The Department of Ecology's Criminal Investigation's Unit has primary responsibility for investigating criminal provisions of our state environmental laws. Ecology's CIU also participates with EPA's Office of Criminal Investigations in a joint Environmental Crimes Task Force located in Seattle.

Communication with Ecology's Criminal Investigation's Unit is the key to any criminal enforcement case. The criminal investigators work for all of the Ecology programs and are an excellent enforcement resource. When an inspector discovers possible criminal activity, they should phone Ecology's Criminal Investigations Unit to discuss the case and evidence discovered. Ecology currently has two investigators (basically one for each side of the mountains). One is co-located with EPA's Office of Criminal Investigations in Seattle (206) 553-8306 and one is located in Ecology's Central Regional Office (509) 457-7109. Please be aware that the Criminal Investigations Unit does not consider phone consultations a formal case referral.

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If following the consultation, the inspector wants to formally refer the case, they should complete a Formal Referral for Criminal Enforcement and send it to Ecology's Criminal Investigations Unit. The Criminal Investigations Unit will review the case based on the information provided and respond back to the inspector regarding disposition of the referral. This form is available from the investigators or on the Intranet.

## **Civil and Criminal Actions**

After checking with the Criminal Investigations Unit it may be possible to pursue both civil and criminal enforcement actions concurrently. However, once a case has been formally referred to the criminal investigators for action, any decision regarding further civil enforcement should be coordinated with the criminal investigators. A criminal investigation does not preclude other regulatory or administrative actions from taking place, such as inspections, responses to complaints, normal permitting activities, and other routine administrative matters. However, it is prudent to coordinate with the assigned criminal investigator to avoid interfering with the criminal action.

## **Confidentiality**

Agency employees must treat information concerning suspected criminal activity as confidential. Premature disclosure of criminal allegations or the fact that an investigation is underway may jeopardize a case and/or slander a business or individual. To protect the reputations of the regulated community from unjust accusations, and to not interfere with criminal investigations in any way, information regarding a criminal case shall be disseminated only to selected persons on a "need to know" basis. Such persons generally include:

- Chief Criminal Investigator
- Key Ecology Management
- Investigative staff
- The Courts
- Prosecutors
- Other police agencies

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## **Prosecution**

Cases investigated by the EPA-Ecology task force may be prosecuted in either the federal or state court system. Ecology will try to direct appropriate cases into state courts wherever possible. The decision whether a case will or will not be prosecuted rests entirely with the prosecutor, either the U.S. Attorney or the District Attorney. It is not a decision that can be made by either the Office of Criminal Investigations or the Department of Ecology, or the Attorney General's Office. A prosecutor may choose not to prosecute a case for a variety of reasons. Do not let this deter you from continuing to refer matters for criminal investigation where appropriate.